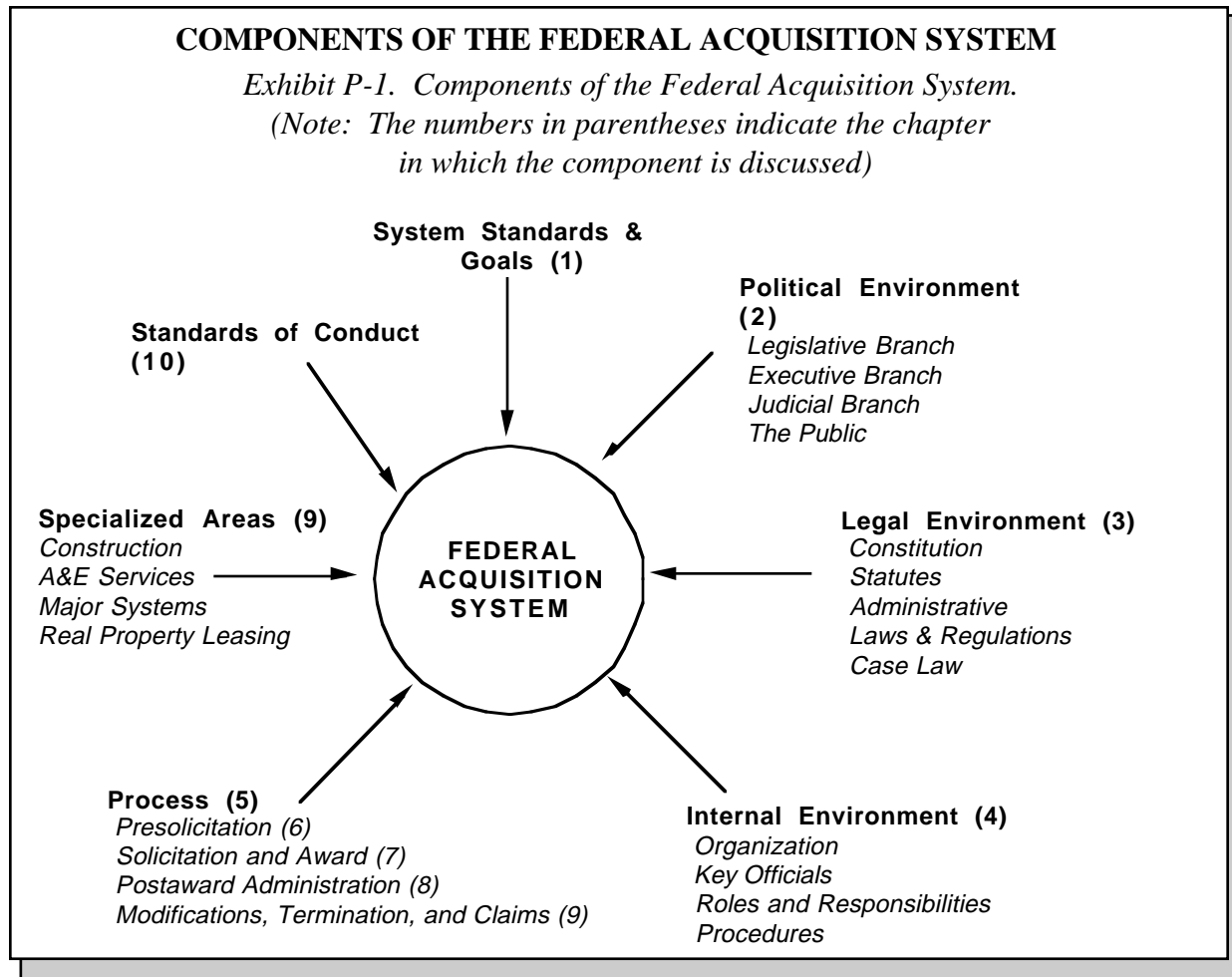


PREFACE

THE FEDERAL ACQUISITION PROCESS



Learning Objectives

- P-1 Identify the basic components of the Federal acquisition process.
- P-2 Define significant terms used in Federal contracting.
- P-3 List and describe the essential elements of a contract.
- P-4 Describe how a contract is discharged.

Exhibit P-2. Learning Objectives.

Learning Objectives

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Purpose And Coverage

This course is an introduction to the Federal acquisition process. It has been designed for anyone with a role in the acquisition of supplies or services for the Federal Government who needs a general knowledge of the:

- Nature and fundamental concepts of contracting.
- Goals of the Federal acquisition process and environmental constraints on goal accomplishment.
- Role of the Congress, the President, and the Judiciary in acquiring supplies and services for the Government.
- Basic statutes and regulations that govern the acquisition process.
- Key players and participants in the acquisition process and their respective roles and responsibilities in acquiring supplies and services.
- Steps in the acquisition process.
- Standards of conduct and ethics that apply to participants in the acquisition process.

Components of the
Federal Acquisition
Process

The Federal acquisition system is comprised of many components or subsystems. Exhibit P-1 illustrates some of these components: laws and regulations, the FAR, policies, procedures, definitions, organizations, and players.

Learning the Acquisition
Process

For many, a general knowledge of the Federal acquisition process will suffice. For others, this desk/reference is only the first in a series of desk/references which detail the Federal acquisition process. If you are among the latter, the GSA Interagency Training Center offers a complete curriculum to progressively and systematically develop your knowledge and skill in performing acquisition duties and tasks.

Acquisition Terms

As a student of the acquisition process, your primary objective is to learn the basic terms of the trade. As in many professions, there are terms of the art whose definitions may differ somewhat from the vernacular. The following terms and definitions are taken from the Federal Acquisition Regulation (FAR).

Acquisition

FAR 2.1

“Acquisition” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Commercial Item

FAR 2.1

“Commercial item” generally means any item intended for the general public and customarily used for nongovernmental purposes (but read the fine print in FAR 2.101 for the exact meaning of this term). Commercial items include:

- Supplies sold, leased or licensed to the general public.
- Supplies offered for sale, lease, or license to the general public.
- Supplies being developed for the general public that will be available in the commercial marketplace in time to satisfy the Government’s delivery requirements.
- Supplies that are modified to satisfy Federal requirements if the modifications are either (1) customarily available in the commercial marketplace or (2) are minor in terms of impact on commercial functions, essential physical characteristics, and purpose.
- Installation, maintenance, repair, training and other services related to use of commercial items, when such services are offered to the general public and the Federal Government contemporaneously and under similar terms and conditions and using the same work force.
- Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions.
- Certain “nondevelopmental” items.

FAR 13.101

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Among the exclusions:

- Real property.
- Services that are sold based on hourly rates without an established catalog or market price for a specific service performed.

Contracting officers are required to determine whether or not the requirement is for a “commercial item” per this definition. If the item is deemed “commercial”, contracting officers must comply with provisions of FAR Part 12 in awarding the contract and establishing the terms and conditions of the contract.

Contract

FAR 2.1

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

Contracting

FAR 2.1

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

FACNET

FAR 2.1

"Federal Acquisition Computer Network (FACNET) Architecture" means the Governmentwide Electronic Commerce/Electronic Data Interchange (EC/EDI) operational capability for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the Government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

Micro-Purchase

**FAR 2.1 &
13.106-1**

"Micro-purchase" means an acquisition of supplies or services under \$2,500 (in aggregate amount), For construction, the limit is \$2,000. Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual

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appointed under FAR 1.603-3(b) considers the price reasonable.

Offer

FAR 2.1

"Offer" means a response to the Government's Request for Proposals (RFP) or Invitation for Bids (IFB) that, if accepted by the Government, binds the vendor to perform the resultant contract. IFBs are used in sealed bidding under FAR Part 14; RFPs are used for negotiations under FAR Part 15.

Purchase Orders & Quotations

FAR 13.101 &
13.108

A "Purchase Order" is an offer by the Government to buy supplies or services. When acquiring supplies or services through the simplified procedures of FAR Part 13, contracting offices typically ask vendors to submit quotes (i.e., prices) for delivering the supplies or services being acquired. Such quotations are NOT offers and are NOT binding on the vendors. Instead, based on the quotations, the contracting officer selects a vendor and sends the selected vendor a purchase order that the vendor either accepts or declines. This is the most significant difference between the procedures of FAR Part 13 vs. those of FAR Parts 14 and 15.

Simplified Acquisition Procedures

FAR 2.1

"Simplified Acquisition Procedures" are procedures prescribed by FAR Part 13 for awarding contracts under Simplified Acquisition Threshold (generally \$100,000). Examples of such procedures: oral or written requests for quotations, award via purchase orders, calls against blanket purchase agreements, and FACNET transactions.

Supplies

FAR 2.1

"Supplies" mean all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

Service Contract

FAR 37.1

"Service contract" means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. The service is considered "nonpersonal" when personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees. The service is considered "personal" if the contract, by its express terms or as administered, makes the contractor personnel appear, in effect,

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Government employees. FAR Part 37 strictly limits use of "personal services" contracts.

Task & Delivery Orders

FAR 2.1

"Task order" means an order for services placed against an established contract or with Government sources. "Delivery order" means an order for supplies placed against an established contract or with Government sources.

Elements of A Contract

As defined above, a contract is a mutually binding legal relationship. To be binding, the contract must include the following:

- An offer.
- An acceptance.
- Consideration.
- Execution by competent parties.
- Legality of purpose.
- Clear terms and conditions.

The following is a brief description of each of these elements.

Offer

An offer is a legally binding promise, made by one party to another, to enter into a contractual agreement, if the offer is accepted. Under FAR Parts 14 and 15, the Federal Government "invites" or "requests" firms to submit offers, which—if accepted by the Government—bind the firms to perform the resultant contracts. In sealed bidding (FAR Part 14), vendor offers are called "bids." In negotiated acquisitions under FAR Part 15, vendor offers are called "proposals."

For most simplified acquisitions under FAR Part 13, the Government typically issues Purchase Orders (POs) to vendors selected for award. A PO is an offer that becomes a contract only if accepted by the vendor.

Acceptance

Acceptance is the act of accepting an offer. To be binding, acceptance must be:

- Definite,
- Communicated (or an action taken that is indicative of acceptance), and
- Unconditional—acceptance that is conditional upon a change in the offer is actually a counter-offer, in which case acceptance to the original offer is not binding.

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As noted above, a bid submitted in response to an Invitation for Bids or a proposal submitted in response to a Request for Proposals constitutes an offer. If the Government accepts the bid or proposal, a contract results (assuming all elements of a contract are represented in the offer and acceptance).

Consideration

For a contract to be binding, the offeror must receive consideration for the goods or services being offered. Consideration refers to anything of value that changes hands between the parties to a contract. Generally, consideration takes the form of money. However, consideration can take other forms than monetary. For instance, the Government may agree to an extension in the delivery date of a contract if, in return, the contractor agrees to provide extra copies of a deliverable at no additional cost.

Competent Parties

The two (or more) parties to a contract must be legally competent to enter into contractual relationships. Generally, this means that the parties must, at the time of agreement, have been:

- Of sound mind,
- Free of the influence of drugs or alcohol, and
- Legal entities.

Legality of Purpose

The purpose or subject matter of the contract must be legal. This means, that a contract to perform an illegal act is unlawful, void, and will not be enforced. Contracts deemed to be against the public interest or in violation of any statute are void.

Clear Terms and Conditions

For a contract to be enforceable, its terms and conditions must be clear enough to permit the courts to conclude that a contractual agreement was intended. Uncertainties concerning offer, acceptance, or consideration may render an agreement unenforceable. This element is sometimes referred to as “mutuality” or “meeting of the minds.”

Discharge Of A Contract

The discharge of a contract means that the obligation incurred by the parties when they entered into the agreement are excused; they are no longer bound to perform as promised. Discharge may come about in several ways, including:

- Performance by both parties.
- Rescinding all or part of the contract.
- Substituting a new contract for an old contract.

PREFACE

Goals Of Contracting

In this preface, you have learned:

- The definition of contracting and related terms.
- The elements of a contract.
- How a contract is discharged.

In the following chapter, you will learn about the ends for which a contract is the means.